THOMSON HILL LTD.

v.

THE COMPTROLLER OF INCOME TAX

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
T KULASEKARAM J
AP RAJAH J
[CIVIL APPEAL NO. 10 OF 1981]
4 MARCH 1982

REVENUE LAW: *Property tax - Whether to be capitalised - Whether part of cost - "Completed contract" method of accounting - True profit of the company for the year of assessment - Comptroller's assessment - Onus on company to prove wrong - Sections 14(1), 80(3) Income Tax Act (Cap. 141).*

The appellant company, a housing developer used in its account the "completed contract" method of accounting. By this method the revenue is recognised only when the project is completed. Though costs and progress payments received are accumulated during the course of the project, profit is not reported until the project is substantially completed. Upon completion all expenses attributable to a particular project are deducted from proceeds of sale and the net profit, if any is assessed to tax.

For the accounting years 1970 to 1973, the Comptroller of Income Tax did not object to the company's adoption of the "completed contract" method of accounting and accepted the treatment of the property tax paid in the accounts as part of the cost of the properties and assessed the income tax payable on that basis. But for the accounting year 1974 the company treated the property tax paid as an item of expenditure in the accounts and claimed as an item of deductible expenditure under s. 14(1) of the Income Tax Act Cap. 141. The Comptroller disallowed the change and assessed the income tax payable accordingly.

The company appealed to the Board of Review contending that the property tax should never be capitalised. On the other hand in support of the Comptroller it was argued that the practice of capitalising property tax is normal, where "completed contract" method of accounting is adopted.

The Board of Review in dismissing the appeal held that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting for the "completed contract" method.

On appeal the High Court upheld the Board's decision and therefore this appeal by the company. The dispute in this case is whether the property tax paid by the company in respect of its properties is part of their cost.

Held:

[1] The Board found no good reason for the change in the treatment of the property tax for the accounting year 1974, which was accepted by the High Court and this Court has not been persuaded on the undisputed facts that the dismissal of the appeal by the Board against the assessment is wrong.

[2] On the accountancy evidence the company had failed to discharge the onus on them to show that the treatment of the property tax in the earlier years was wrong in law and in fact.

[Appeal dismissed with costs.]

Cases referred to:
Odeon Associated Theatres Ltd. v. Jones 48 Tax Cases 257
Whimster & Co. v. The Commissioners of Inland Revenue 12 Tax Cases 813
Duple Motor Bodies, Ltd. v. Ostime 39 Tax Cases 537
B.S.C. Footwear Ltd. v. Ridgway 47 Tax Cases 495

Legislation referred to:
Income Tax Act (Cap 141) [Sing], ss. 14(1), 80(3)

JUDGMENT

Thomson Hill Ltd., the appellant company, was incorporated on 15 April 1970 and carries on the business of a housing developer. The company purchased several properties some of which it proceeded to develop and the rest it retained as its "land bank".

Since its incorporation the company in its accounts pertaining to its development projects used the "completed contract" method of accounting. Under this method of revenue is recognised only when the project is completed or substantially completed, costs and progress payments received are accumulated during the course of the project, but profit is not reported until the project is substantially completed.

The company treated each development project separately and individual cost records are kept for each project. Development expenses are "capitalised" in the balance sheet and are accumulated and carried forward from year to year until the project is completed. Upon completion all expenses attribute to a particular project are deducted from proceeds of sale and the net profits, if any, are assessed to tax.

For the accounting years 1970 to 1973 property tax incurred and paid annually by the company in respect of all its properties was "capitalised" in the balance sheet as part of the cost of the company's properties and did not appear in the profit and loss account. During these accounting years the Comptroller of Income Tax, the respondent, did not object to the company's adoption of the "completed contract" method of accounting and accepted the treatment of the property tax paid in the accounts as part of the cost of the properties and assessed the income tax payable on that basis.

However, for the accounting year 1974 the property tax paid amounting to $253,980.00 was for the first time treated in the accounts as an item of expenditure and charged into the debit side of the profit and loss account and this amount was claimed by the company as an item of deductible expenditure under s. 14(1) of the Income Tax Act (Cap. 141). The Comptroller disallowed this change in the treatment of the property tax payment and assessed the income tax payable accordingly. The company appealed to the Board of Review and the sole issue for determination related to the proper tax paid by the company in respect of its properties.

The Board heard accountancy evidence. In support of the company Mr. Coomber, a practising chartered accountant said that the expensing of the property tax paid under the profit and loss account of the company was not inconsistent with commercial accounting practice and with the "completed contract" method of accounting. He said that property tax should never be capitalised as it does nothing to enhance the value of the property in respect of which property tax is payable and that it would be incorrect to do so.

On the other hand in support of the Comptroller Mr. Yip a certified accountant with no commercial accounting experience but employed by the Inland Revenue Department for sixteen years said that the practice of capitalising property tax is in accordance. with normal accounting practice in the case of a housing developer who adopts the "completed contract" method of accounting. He based his opinion on two publications. One is called "Statement of Standard Accounting Practice No. 9 Stocks and Works in Progress" (SSAP 9) published in May 1975 by the Institute of Charted Accountants in England and Wales. The other is called "Exposure Draft 12, International Accounting Standard, Proposed Statement, Accounting for Construction Contracts" (Exposure Draft 12) issued for comment in December 1977 by the International Accounting Standards Committee.

The Board of Review held that "considering the evidence before us and the submissions of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the completed contract cost' method of accounting is adopted" and dismissed the company's appeal. The High Court on appeal upheld the Board's decision and the company now appeals.

In the present case we are concerned with ascertaining the true profit of the company for the year of assessment 1974. That and nothing else, apart from express statutory adjustments, is the subject of taxation in respect of a trade (see *Odeon Associated Theatres Ltd. v. Jones* 48 Tax Cases 257). That profit must be ascertained in accordance with the ordinary principles of commercial accounting, including the principle that stock in trade must be brought into account at the beginning and end of the year at its cost or market value whichever is the lower (see *Whimster & Co. v. The Commissioners of Inland Revenue* 12 Tax Cases 813 at 823).

Although accountancy evidence is conclusive on the practice of accountants in the sense of the principles on which accountants act in practice it is for the Court to decide what are the correct principles of the prevailing system of commercial accounting and to apply those principles in order to ascertain the true profit in the particular case (see *Odeon Associated Theatres Ltd.* case *supra*).

It was and is common ground in this case that the company's properties acquired for development (including those in its land bank) are its stock in trade and that the use of the completed contracts accounting method is in accordance with the ordinary principles of commercial accounting. The dispute in this case is whether the property tax paid by the company in respect of its properties is part of their cost. If it is not then the treatment of property tax paid in the 1974 accounts would be in accordance with the ordinary principles of ordinary accounting.

On behalf of the company it is submitted that in the present case the correct approach in law is to treat the property tax paid as a straightforward deductible expense and not as part of the cost of the properties as to do so accords with commonsense, with the accountancy evidence called by the company and with the principles in the case of *Duple Motor Bodies, Ltd. v. Ostime* (39 Tax Cases 537). In the *Duple* case Viscount Simonds said at page 567:

> My Lords, a first principle of tax law is that the taxpayer, in ascertaining his profit, is entitled to debit his expenditure in the year of assessment unless it is excluded by s. 137 of the Income Tax Act, 1952. And this is so although the whole of that expenditure may not bear fruit in that year.

Lord Reid said at page 571:

> It has long been established that you are entitled to include in expenditure for the year all business expenses in that year not excluded by ... s. 137 of the Income Tax Act, 1952, whether or not they can be attributed to the production of goods in that year. It matters not that certain expenditure may have proved abortive, or may have been spent solely with a view to production and profit in some future year and have no relation at all to production during the year of account. ... Expenditure which it is permissible to include in the account is the whole general expenditure during the period, and it can only be said to have been spent to earn the profits of that year in the sense that it was all spent during that year to keep the business going and that, during that year, the business yielded the profit shown in the account. So the question is not what expenditure it is proper to leave in the account as attributable to goods sold during the year, but what expenditure it is proper in effect to exclude from the account by setting against it a figure representing stock-in-trade and work in progress. You must justify what you seek to exclude in this way as being properly attributable to, and properly represented by, those articles.

Relying on the *Duple* case the submission is that it is for the Comptroller to justify what he seeks to treat as costs as "being properly attributable to, and properly represented by, the stock" and that the evidence of Mr. Yip relied on by the Comptroller does not justify the treatment of property tax as cost.

The Comptroller's submission is that under s. 80(3) of the Income Tax Act the onus is on the company to prove that the Comptroller's assessment is wrong and that the Board was justified on the evidence before it to find that the company had failed to discharge the onus on it to satisfy the Board that its former treatment of property tax was wrong and not in accordance with the ordinary principles of commercial accounting. It is also submitted that the Board was correct in applying the consistency principle enunciated by Lord Reid in the *Duple* case and referred to with approval by Lord Morris of Borth-y-Gest in *B.S.C. Footwear Ltd. v. Ridgway* (47 Tax Cases 495) at page 529:

> It was recognised by the Special Commissioners and in the judgments that good reason must be shown before giving endorsement to the action of the Crown in requiring a change of method of accountancy which the Company for at least thirty years had adopted and which the Crown had not in that time challenged. Guidance was given as to this by my noble and learned friend Lord Reid in his speech in *Duple Motor Bodies Ltd. v. Ostime.* Following that guidance our concern must be to consider whether the method required by the Crown is better calculated than the method hitherto adopted by the Company to reveal the full amount of the profits or gains of the Company.

Earlier on in his speech Lord Morris at page 528 said:

> For many years the Company have kept their accounts upon a particular basis. The Crown with appreciation of basis. The Crown with appreciation of it have accepted it. The onus must be upon the Crown to show that the basis is unacceptable and should change. As between competing methods and practices of commercial accounting a mere preference for one should not give it priority if the others are not open to objection. What must in the present case be considered is whether the basis which the Company adopted was or was not a basis which would show 'the full amount of the profits or gains' of a particular year: *see* s.127 of the Income Tax Act, 1952.

The passage of Lord Reid's speech referred to reads as follows:

> It appears to me that we must begin at the other end and simply ask what, in all the circumstances of a particular business, is a figure which fairly represents the cost of stock-in-trade and work in progress. One thing clearly emerges as approved by the accountancy profession - whatever method is followed, it must be applied consistently. I accept that. So the real question is, what method best fits the circumstances of a particular business. And if a method has been applied consistently in the past, then it seems to follow that it should not be changed unless there is good reason for the change sufficient to outweigh any difficulties in the transitional year. There might, perhaps, be good reason for a change in a particular case in the other direction. But I can find nothing in the Case to justify such a change in the present case.

The Board found no good reason for the change in the treatment of the property tax for the accounting year 1974 and that on the accountancy evidence the company had failed to discharge the onus on them to show that the treatment of the property tax in the accounts for the earlier years was wrong in law and in fact. Those findings were accepted by the High Court and we have not been persuaded on the undisputed facts and on the accountancy evidence before the Board that the decision of the Board in dismissing the appeal of the company against the assessment was wrong. The appeal is dismissed with costs.

Also found at [1982] CLJ 147